

56 THE  
THOUGHTS

OF A

Private Gentleman

ON THE

Late Indemnifying Bill.

In a LETTER to his Friend  
in the Country.

---

*Magnò se Jndice quisque tuetur.* Lucan.

---

The SECOND EDITION.

---

L O N D O N :

Printed for J. Roberts, near the Oxford-Arms  
in Warwick-Lane. 1742.

( Price 6 d. )

THE  
THOUGHTS

OF A

Private Gentleman

ON THE

Late Indemnifying Bill.

IN A LETTER TO HIS FRIEND  
IN THE COUNTRY.

CAMBRIDGE  
UNIVERSITY  
LIBRARY

700:17



THE  
THOUGHTS  
OF A

Private Gentleman, &c.

S I R,



YOU enjoin me a very hard Task, to give you my Thoughts on a Bill, of which two such great Bodies of Men have entertained such very different Sentiments. But hard as it is, I will undertake it, rather than I will leave you and your Friends in the Country in a State of Doubt and Uncertainty. Whether the Lords or Commons were in the right, the one in rejecting, and the other



in passing the Bill, I will not take upon me to say, since to be sure they both acted on the same Motive of Conviction. But I will lay before you, as well as I can, the Arguments on both Sides, avoiding as much as possible giving any Judgment my self, only as I shall be much better understood, if I appear as an Advocate on one Side of the Question, I will state the Objections against the Bill as my own ; and without any further Preface, I will come directly to the Point in Question, and shall proceed in this Method.

In the first Place, I will give you the Objections against such Bills in general, and in the next, the Objections against this particular Bill ; and, in the last Place, I will lay before you the Arguments which have been offered to support it, and the Answers to those Arguments ; and I do solemnly assure you, that I will not purposely omit any one thing, that I have ever yet heard said, either for or against the Bill.

To these Bills in general it is objected, That they are contrary to the Rules of Justice and Equity, and contrary to the particular Laws and Constitution of this Kingdom.

It is contrary to the Rules of Justice and Equity, that any one should be condemned without a fair Tryal, but no one can be fairly tryed, unless the Evidence be impartial  
and

and un  
any In  
or Inter  
upright,  
he cann  
Judgme  
even in  
to be E  
in the l  
Manor  
Right  
Wast  
never  
Eviden  
tency,  
it be p  
Evide  
Witne  
the I  
nishe  
publi  
Case,  
will  
Fact  
great  
Sach  
liam  
Cha  
ing  
Dan  
dign  
Rev



and unbyassed ; if the Evidence be under any Influence, either of Favour, Prejudice, or Interest, though the Judge be never so upright, as he has no right Rule to go by, he cannot be sure that he pronounces a just Judgment. The Law therefore of *England*, even in Civil Cases, will not permit any one to be Evidence that is byassed or interested in the least Degree. If the Boundary of a Manor be in Question, a Man who has a Right of Common but for one Sheep in the Wast of such Manor (though the Wast be never so large) is never permitted to be an Evidence : It is an Objection to his Competency, and not to his Credit only. But if it be proved that a Man was bribed to be an Evidence, he is not only disabled from being a Witness, but both he and the Person giving the Bribe, are liable to be very severely punished as for a very high Misdemeanor. To publish an Advertisement in a particular Case, offering a Reward to any one, that will give Evidence in relation to a particular Fact, has been always held to be a very great Offence ; and in the Case of *Pool* and *Sacheverel*, which is reported in *Peer Williams's Reports*, Vol. I. Page 675. the Lord Chancellor committed a Person for publishing an Advertisement of this Sort in the *Daily Courant*, and declared with great Indignation and Resentment, *that offering a Reward in general for Persons to come in*  
*and*

*and be Evidence, was much worse than offering it to a particular Person : Because it was an Offer to Rogues as well as to honest Men, and he said that it was a Reproach to the Justice of the Nation, and an insufferable Thing, to publish an Advertisement in Print, in order to procure Evidence. And surely it is a much greater Reproach to the Justice of the Nation, to offer a Reward by a Law to all the Rogues in the Kingdom to come in and give Evidence against a particular Person. And yet these indemnifying Laws can be considered in no other Light. It is publishing an Advertisement of a general Indemnity to all that will become Witnesses, which is bribing them to be so in the highest Degree, since their own Crimes are to be pardoned only on Condition that they give Evidence of some Crime against another.*

As an Advertisement of this Sort, in the Case of a private Person, is a very high Misdemeanor, so I have heard it affirmed by Persons of the greatest Knowledge and Integrity, that a Proclamation of this Sort, if issued by the Crown itself, would be illegal and unjust in the highest Degree, and I would not be in that Chancellor's Place for ten times the Value of his Office, who should dare to set the great Seal to a Proclamation of this Sort.

But it may be said, that many Proclamations have issued, and many Acts of Parliament

ment have pa  
Persons whe  
the Crimes o  
I will not g  
proposed in  
present, but  
I come go g  
for the Bill.

It may b  
several inde  
Book, and  
against the  
There are  
Number, a  
of them are  
circumstances  
more parti  
That the  
tain, that  
the Rewar  
ever they  
was likew  
Fact prov  
these Bills  
been som  
they are  
Law, and  
our Consti  
always as  
be almost  
them had  
good Pur

ment have passed, offering a Reward to those Persons who should make a Discovery of the Crimes or Criminals therein mentioned. I will not go out of the Method which I proposed in order to answer this Objection at present, but will consider it particularly when I come to give an Answer to the Arguments for the Bill.

It may be said likewise, that there are several indemnifying Acts in the Statute-Book, and that therefore I am arguing against the Acts of the whole Legislature. There are indeed some, but very few in Number, and those of modern Date, and all of them are attended with very material Circumstances, which (as I shall shew hereafter more particularly) fail in the present Case. That the Discovery there required is certain, that the Benefit to the Publick, and the Reward are both certain, and whenever they were made *ex post facto*, there was likewise a *Corpus delicti* or a certain Fact proved to be committed. And tho' these Bills under these Circumstances have been sometimes thought necessary, yet as they are contrary to the Notions of our Law, and all of them an Infringement on our Constitution, they have been considered always as necessary Evils, and one would be almost inclined to wish, that none of them had ever passed, since tho' made for good Purposes, they have been cited as Precedents



cedents in the present Case, with which they have not the least Resemblance. For this, as well as for many other Reasons, it is high time to stop where we are, and not to carry these Bills a Jot farther then they have gone already.

Besides what I have already said of these Bills, they are liable to this unanswerable Objection, that they are the greatest Encouragement to wicked Men to accuse an innocent Person, if they happen to have a Spite against him; Because if they swear never so falsely, they may do it with Impunity. For I defy any Lawyer in the Kingdom to shew what Remedy the injured Person has against one who gives false Evidence against another before a Committee of the House of Commons, under the Shelter of one of these Bills of Indemnity. For tho' the Law, which abhors malicious Prosecutions, gives an Action in all other Cases against one who prosecutes or gives Evidence against another falsely and maliciously, it will be very difficult, if not impracticable, to maintain such an Action against one who gives false Evidence against another before a Committee of the House of Commons.

First, Because, I believe no Precedent can be found of such an Action as this, and it is difficult as well as dangerous to walk in untrodden Paths. And as such an Action will

will  
upon  
lem  
cann  
Oath  
wou  
how  
per  
Com  
Evid  
ther  
min  
thes  
dou  
wou  
ried  
hav  
he  
Ind  
Sor  
and  
of  
the  
ke  
all  
Ki  
lik  
tha  
ni  
in  
Bi

will only lie where the Evidence is given upon Oath, and as this Evidence, how solemnly soever it may be said to be given, cannot be considered as Evidence upon Oath; For this Reason likewise an Action would not lie; or if it would, I know not how it is possible to prove the Fact by proper Evidence. For the Report of a Secret Committee is (as I have been informed) not Evidence; And I fancy that the Committee themselves would not submit to be examined on such an Occasion. And if all these Difficulties could be got over, it is very doubtful whether a House of Commons would suffer such a Prosecution to be carried on. And if the Person injured can have no Relief by an Action of this Sort, he is certainly without Remedy. For an Indictment of Perjury will not lie upon this Sort of Evidence, for Reasons very plain and obvious, and which I shall take Notice of more particularly in my Objections to the present Bill. So here is a Method chalked out, contrary to Law and Justice, for all the wicked and malicious Persons in the Kingdom to abuse any one they do not like with Impunity. I think therefore that these are very properly called *indemnifying Bills*.

Having said thus much of these Bills in General, I come now to the present Bill, which is lyable to all the Objec-

tions that I have already made, and to many more, as it goes much farther than any Bill that has ever yet passed : Nay, I believe I may venture to say, than any Bill that was ever yet offered in either House of Parliament. But as positive Assertions without Proof, ought to be of no Weight, I shall go on to prove what I say.

And, in the first Place, I will lay down Four Positions, which I will undertake to make good, when I come to the Arguments for the Bill.

*First*, That in all former Bills, either of Indemnity or Reward, there is a *corpus delicti*, as the Civilians call it, or (to speak more plainly) a certain Fact done, which is the Foundation of all those Bills.

*Secondly*, The Benefit to the Publick is certain.

*Thirdly*, The Discovery desired is certain. And,

*Lastly*, In all those Bills the Reward or Indemnity is certain likewise.

But all these Ingredients, so very necessary to make these Sort of Bills even tolerable and excusable, entirely fail in the present Case.

It is not so much as suggested in this Bill, that any one Fact has been proved against the Earl of *Orford*; but the Suggestion only is, *that an Enquiry is depending in Parliament* (meaning as I presume the

the Ho  
I know  
Condu  
quiry  
entirely  
that th  
against

The  
wise un  
tain, f  
to intr  
dence  
Kingd  
Legisl  
*Orfor*  
again  
must  
and i  
unpre  
lick  
ceder  
liam  
cent  
the  
in c  
Sub  
and  
a P  
in t  
livi  
Tin



the House of Commons, never before that I know of, called by that Name) into his Conduct in General. But what this Enquiry has hitherto produced, the Bill is entirely silent, and seems rather to imply that they have as yet discovered nothing against him.

The Benefit to the Publick is here likewise uncertain, but the Detriment is certain, for it is making a Precedent of a Law to introduce and establish a Species of Evidence contrary to the known Laws of this Kingdom. But where is the Benefit? The Legislature I am sure will not prejudge Lord *Orford*, before any Evidence be given against him, and therefore at present he must be considered as an innocent Person; and if it should come out so at last, (as most unprejudiced People think it will) the Publick will reap no Benefit at all; but a Precedent will remain on the Records of Parliament, of an Act passed against an innocent Person, to deprive him of enjoying the Benefit of the Laws of this Kingdom, in common with the rest of his Majesty's Subjects, and to subject him to an unfair and an illegal Tryal. Of what Use such a Precedent might be one Time or other, in the Hands of a wicked Ministry, no one living can foresee; but if ever hereafter bad Times should come, Posterity would have

Reason to curse their Ancestors for furnishing them with such a Precedent as this.

The Discovery likewise sought after by this Bill, is not in respect to a particular Fact, but *of Matters touching and concerning the Enquiry, and relative thereunto*, and the Enquiry referred to is as uncertain as possible; for after enumerating several Particulars, it is to be *concerning other Matters relating to the Conduct of the Earl of Orford*. I beg that you would look into the Bill itself, to see that I do not misrepresent it, for otherwise I am afraid that you will think that I have entirely dropped my Subject, and that I am describing a *Spanish Inquisition*.

And as the Discovery is so very uncertain, that the whole Bill may be of a Piece, the Indemnity, which is the Reward that is offered in this *Siquis* to all common Informers, is as uncertain as the Discovery itself. Not a certain Sum of Money, not the Pardon of any particular Crime, but the Persons coming in to give Evidence under this Bill, are to be indemnified from all their own Crimes which they shall any ways discover or disclose in their giving Evidence against Lord *Orford*; and it is next to impossible to foresee what Crimes may be pardoned by it.

The Words of the Bill are, *That all Persons who shall truly and faithfully discover*

cove  
Kno  
such  
exa  
saia  
be,  
cha  
nal  
cap  
or  
M  
th  
an  
sa  
th  
la  
fo  
pu  
b  
fi  
f  
a  
h  
u

*cover and disclose to the best of their Knowledge, Remembrance and Belief, all such Matters and Things as they shall be examined unto touching or concerning the said Enquiry and relative thereunto, shall be, and are thereby indemnified and discharged of and from all Forfeitures, Penalties, Punishments, Disabilities and Incapacities which they shall or may incur or become subject to for or by Reason or Means of any Matter or Thing which they shall so truly and faithfully discover and make known, touching or concerning the said Enquiry, and relative thereunto; and the Enquiry directed, is of all Matters relating to the Conduct of the Earl of Orford for Ten Years last past; and I could put many Cases to shew, that many Persons by these Words may happen to be indemnified from the greatest Crimes, nay even from High Treason itself. For it must be admitted to me, that very wicked Men have frequently a greater Share of Cunning than honest People; and a Person with but a moderate Share of Cunning, may so intersperse and interweave all his own Crimes in the Evidence which he gives against Lord Orford, as to procure a general Indemnity for himself: And what can this be more properly called, than bribing Men to give Evidence against Lord Orford, in order to save their own Lives or Estates.*

But



But this Practice, tho' it has been condemned in all Ages and Countries by honest and upright Men, is now it seems all of a sudden become just and right, for no other Reason, but because it is thought necessary that Lord *Orford* should be made a Sacrifice to the Ambition of some, and the Malice of others. Hang but Lord *Orford*, and let all the Rogues in the Kingdom escape unpunished.

I shall conclude this Head with what was said by as great and as good a Man as ever this Nation produced ; I mean the Lord Chief Justice *Hale*, in his History of the Pleas of the Crown, *Vol. II. p. 226.* where speaking concerning *Approvement* (the only Proceeding at Common Law which seems to bear any Resemblance to these indemnifying Bills) *This Course* (says he) *of admitting Approvers hath been long since disused, and the Truth is, that more Mischief hath come to good Men by these Kind of Approvements, by false Accusations of desperate Villains, than Benefit to the Publick, by the Discovery and convicting of real Offenders.*

Another Objection has been made against the Bill, but I think it of so little Weight, that I should not have taken Notice of it, but that I promised you at first not to omit any Thing that had been said on the one Side or the other. The Objection is, that  
this

this Bill  
that tho  
would b  
tion ; an  
Witnesse  
though  
Objection  
Persons  
notwith  
Bill, it  
and Per  
sons to  
This, a  
in *Spee*  
For I c  
Liberty  
tion, a  
ed, wh  
tion, ;  
ture ;  
tested  
I decl  
a hot  
who  
so lo  
Quest  
plain  
just  
ing  
him  
for a  
ly th

this Bill would have been of no Use; for that those who are willing to be Witnesses, would be so without such an Indemnification; and those who are unwilling to be Witnesses, would not give their Testimony, though indemnified by this Bill. To this Objection it has been answered, That if Persons should still refuse to be Witnesses notwithstanding the Indemnification of this Bill, it must be followed by a Bill of Pains and Penalties to compel such obstinate Persons to be Witnesses against Lord *Orford*. This, as I have heard, has been given out in *Speeches*, but I suppose only *in terrorem*: For I cannot believe, that in a Country of Liberty, and in a Christian Protestant Nation, any such Thing could ever be intended, which so much resembles the *Inquisition*, and which favours so much of *Torture*; a Practice always abhorred and detested by every true *Englishman*. But when I declared myself an Infidel upon this Head, a hot positive Fellow told me, That those who imprisoned *P——n*, and detained him so long in *Newgate* for not answering the Questions proposed to him, (though it is plainly admitted by this Bill, that he had a just and reasonable Excuse for not answering those Questions, as tending to accuse himself) might, with the same Justice, vote for a Bill of Pains and Penalties. But surely there is nothing in this Argument; for

as

as the Secret Committee did not acquaint the House, what the Questions were, which *P——n* refused to answer, no one but themselves can say, whether he had a reasonable Excuse or not.

Besides these general Objections, there have been several particular Objections made to this Bill, as that the Examination directed is in a very extraordinary Manner, and that a new Sort of Evidence is endeavour'd to be established contrary to the known Rule of Evidence. *That the best Evidence must always be produced, that the Nature of the Thing will admit.* It has been likewise objected, that several private Persons may be greatly injured in their Properties by this Bill.

As the Bill extends to an Examination before the House of Commons, or a Committee of that House, such Examination must either be without Oath, (for neither the House nor the Committee have a Power to administer an Oath) or it must be what they call an Examination in a solemn Manner, which is by calling in a Justice of Peace to administer an Oath to the Witnesses before they go in to be examined.

If the Word *examined*, in the Bill, is to be understood of an Examination of the first Sort, (that is an Examination without Oath) I tremble at the Consequences of this Bill: For then, if the greatest Rogue in

in the K  
Lord O  
Partner  
once free  
all the C  
and a Pr  
of Evid  
most sol

If the  
the other  
I think  
in a sol  
the Mar  
no Pow  
ter whe  
there i  
such E  
confide  
*dice*; a  
falsely,  
jury:  
Person  
Autho  
nour, a  
But as  
out o  
Lawye  
agree,  
dicted  
and t  
Case  
Book



in the Kingdom will say any Thing against Lord *Orford*, charging him with being Partner with him in his Crimes, he is at once freed, pardoned, and discharged from all the Crimes that ever he has committed; and a Precedent will be made of allowing of Evidence without Oath, even upon the most solemn Occasion.

If the Word *examined* be understood of the other Sort of Examination, (called, tho' I think a little improperly, an Examination in a solemn Manner) it will not much mend the Matter: For as a Justice of Peace has no Power to administer an Oath in a Matter where he hath no Jurisdiction, or where there is no Cause depending before him; such Examination, as aforesaid, must be consider'd as an Oath taken *coram non Judice*; and if the Person examined swears falsely, he is not liable to be indicted of Perjury: Nay, I have heard it said, that if a Person administers an Oath without a legal Authority, he is guilty of a high Misdemeanour, and liable to be very severely punished. But as these are very great Points, and quite out of my Way, I have consulted all the Lawyers of my Acquaintance, and they all agree, That a Person is not liable to be indicted of Perjury in an *extrajudicial* Oath; and they assure me, that there is not any Case nor any one Saying in any of the Law Books to the contrary, except a Saying of

Lord Chief Justice *Jefferys*, in an anonymous Case reported in *1st Ventr.* 370. and I believe you will think that an *obiter-dictum* of Lord Chief Justice *Jefferys*, especially in a Case of this Nature, is of no very great Authority. My Friends likewise amongst the Lawyers, have furnish'd me with a very great Authority in respect to these extrajudicial Oaths; and that is the Authority of my Lord *Coke*, 3 *Inst.* 165. where he says, That it is a high Contempt to administer an Oath without Warrant of Law, to be punished by Fine and Imprisonment. And for this he cites several Authorities, and concludes with saying, That it was resolved in Parliament, *anno* 43 *El.* *That an Oath cannot be administered by any one who hath not an Authority so to do by the Common Law, or an Act of Parliament.* The Lawyers likewise tell me, that in the 7 *Anne* c. 20. being the Registry Act for the County of *Middlesex*, there is an express Power given to the Lord Chancellor, the Two Chief Justices and the Chief Baron, to administer the Oath thereby directed, and that there is the like Power given to the Barons of the Exchequer by the 7 *G. I.* c. 1. relating to the *South Sea* Company, and that the same Powers are given to the Judges of *Westminster-hall* in several other Acts; which shews plainly that it was the Opinion of the Legislature in those

those Times  
could not  
an express  
of Parliam

An Ex  
(as I am  
heard of  
ver adm  
some few  
Necessity  
dence th  
mit of.

Writing  
else was  
such No  
by Simi  
be coun  
say in  
well ac  
that he  
Belief  
as Evid  
two p  
the be  
no Per  
giving  
to pro

If  
is to  
new  
mina  
and

those Times, that even those great Judges could not administer a new Oath, unless an exprefs Power was given them by Act of Parliament.

An Examination likewise upon Belief is (as I am told) a new Sort of Evidence, unheard of before in Criminal Cases, and never admitted even in Civil Cases; Except in some few Instances, merely for the Sake of Necessity, it being the best and only Evidence that the Nature of the Thing will admit of. As in the Case of a Note or other Writing sign'd by a Person where no one else was present, because, as the Signing of such Note or Writing can only be proved by Similitude of Hands, and as Hands may be counterfeited, the most that any one can say in such Case is, (tho' he be never so well acquainted with the Person's Writing) that he verily believes it to be his Hand. But Belief (as I am informed) is not admitted as Evidence in any other Case, for these two plain Reasons; *First*, Because it is not the best Evidence; and, *secondly*, Because no Person can be convicted of Perjury for giving such Evidence, it being impossible to prove that he did not believe it.

If therefore this Examination on Belief is to obtain any Credit, it will establish a new Sort of Evidence, and that in a Criminal Case, contrary to Reason and Justice, and the known Laws of this Kingdom. If



it is to obtain no Credit, and to be of no Efficacy at all, then a Man may be indemnified by this Bill from all his own Offences, only for vilifying and abusing Lord *Orford*, without deposing any Thing that can be admitted as Evidence against him. For he is to be indemnified by the express Words of the Bill, if he disclose any Thing against Lord *Orford* upon his Belief only; and I have been told, but dare not positively affirm it, being very little conversant in Acts of Parliament, that this Word *Belief* was never put in any Act of Parliament relating to Evidence before; tho' it is frequently inserted in Chancery Interrogatories, by Persons who well know that the Word is of no other Use but to make the Proceedings the longer, and to put the Suitors to a greater Expence.

It may happen likewise, that several private Persons may be very much injured in their Properties by this General Indemnification. A Person may be injured by a Returning Officer, and have a Right to recover 500 *l.* against him; and yet this Returning Officer, by giving Evidence against Lord *Orford*, as that he was bribed by him to make a Return, will be discharged from this Penalty, and the injured innocent Person will be deprived of his legal Remedy. Many more Instances of this Sort may be put, which your own good Understanding will easily suggest to you. Ha-

Havi  
the Bill  
my Pro  
made  
will gi  
And  
the Bi  
Attem  
ceden  
Th  
Act t  
Act r  
fy th  
6 G.  
furth  
likew  
very  
them  
been  
Proo  
nity  
and  
a R  
mo  
of  
and  
pre  
in  
of  
of  
co  
tw

Having given you the Objections against the Bill, I will lay before you, according to my Promise, the Arguments which have been made Use of to support it, and which I will give you in their full Strength.

And *first*. It has been said in Behalf of the Bill, that it is so far from being a new Attempt, that there have been several Precedents of this Sort before.

That the Act 6 & 7 W. III. intituled, *An Act to indemnify Sir Thomas Cooke, &c.* The Act 11 G. I. c. 2. intituled, *An Act to indemnify the Masters in Chancery, &c.* The Act 6 G. II. c. 2. intituled, *An Act to allow a further Time to John Thompson, &c.* And likewise several Acts relating to the Discovery of Frauds in the Revenue, are all of them of the same Nature as this. It has been likewise much insisted on, that all the Proclamations offering a Reward or Indemnity for a Discovery of particular Criminals; and the several Acts of Parliament offering a Reward for the Discovery of Felons, and more particularly the 5 Anne c. 31. are all of them founded on the same Principles, and liable to the same Objections as the present Bill. That the last mentioned Act, in particular, pardons the Person not only of such Felonies which he shall discover, but of all other Burglaries and Felonies by him committed upon his making a Discovery of two Persons who shall thereupon be convicted

victed of any Burglary or Felony specified in the Act, and a Reward is likewise thereby given to such Discoverer.

It has been said likewise, that it is a Maxim in Law, *That the Publick has a Right to every Man's Evidence*; and therefore, if any one insists that he shall not be compelled to give Evidence by reason of another Maxim in Law, *That no one shall be obliged to accuse himself*, that this Objection ought to be removed, that the Publick may not be deprived of the Testimony of such Person; and that this is the Intent and Purport of the present Bill. And tho' it hath been admitted, that there is no *Corpus delicti*, nor any Fact proved against Lord Orford, it has been insisted that there is *Corpus suspicionis*, which is tantamount to a *Corpus delicti*, and a sufficient Foundation to pass the present Bill: And upon this Head, and to enforce this Argument, many Things have been said against Lord Orford; as, That the general Voice of the People is against him: That he is the most universally hated and detested that ever any Minister was: That the whole Nation crys aloud for Justice; and, that if he be suffer'd to escape unpunished, God knows what may be the Consequence.

It has been said also, that the *Reasons assigned by the Persons whose Behaviour gave Rise to this Bill, for refusing their Evi-*

*Evidence*  
*it would*  
*they a*

This  
gument  
to give  
because

To  
as I ha  
with o

And  
this A  
the Di  
are ce  
in all  
Rewa  
and i  
Inden  
in all  
requi  
there  
been  
in th  
was

very  
a pa  
nifie  
ther  
that  
ami  
Lor  
give



*Evidence, is a sufficient Implication, that it would affect the Earl of Orford, since they admit it would affect themselves.*

This last is, I own, an unanswerable Argument, and I never heard any one pretend to give it an Answer, for this plain Reason, because it is altogether unintelligible.

To the rest I will give you such Answers as I have picked up in my Conversation with others upon this Subject.

And First, in respect to the Precedents, this Answer may be given in General, That the Discovery and the Benefit to the Publick are certain in every one of them, and that in all of them, except *Stat. 5 Anne*, the Reward or Indemnity is certain likewise; and in that the Reward is certain, and the Indemnity is confined to Felonies. And in all the Acts in which any Discovery is required, in respect to a particular Person, there was certain Proof that a Fact had been committed. To be more particular, in the Case of Sir *Thomas Cooke*, the Act was passed at his own Request, the Discovery which he was to make relates only to a particular Matter, and he is to be indemnified only in respect to two particular Sums therein specified; and it is very remarkable that in this Act, he being directed to be examined upon Oath before a Committee of Lords and Commons, a Power is expressly given to them to administer such Oath, and  
the

the Fact, which was the Occasion of the passing of the Act, is recited in the Preamble to have been fully proved before.

In the Act concerning the Masters in Chancery, they were to be examined only in Respect to the Purchase of their Offices, and were to be indemnified only from such Forfeitures and Incapacities as they had incurred on that Account; and besides there the Fact was notorious, and Lord *Macclesfield* had been actually impeached before the Bill was brought in.

In the Case of *Thompson*, he had been declared a Bankrupt, had fled from Justice, and had been adjudged guilty of Felony, by the Stat. 5 G. II. before the Act of 6 G. II. was made, and that Statute only pardons him for the Sake of the poor Sufferers in the Losses of the Charitable Corporation, in case he would discover the Effects which had been embezzled by him and others, in order that they might be applied to their Relief. So that it is plain, from a true State of the Purport of these three Acts, that they have not the least Resemblance to the present Bill.

What I have said in Respect to these three Acts, is applicable to all the Acts relating to Highwaymen and Robbers, and even to the Act of 5 *Anne*, as I have before observed. And there is likewise this manifest Difference between those and the present

present  
to prevent  
heinous  
particular  
against  
ward and  
giving  
discover  
deed, t  
demnit  
have be  
they an  
these A  
dence  
intitul  
give E  
that it  
structi  
prevent  
be a  
rices,  
of th  
been  
cause  
many  
And  
sity's  
Desig  
allow  
It  
pres  
have

present Bill, that they are all of them made to prevent the general Practice of great and heinous Crimes, and not to serve a particular Purpose, or to produce a Discovery against one single Person. Besides, the Reward and Indemnity proposed, is not for giving Evidence, but for apprehending and discovering the Criminals. I do admit indeed, that the Persons intituled to the Indemnity or Reward, under the several Acts, have been permitted to give Evidence, but they are not enabled so to do by any of these Acts, which leave the Matter of Evidence just as it was before, and the Persons intituled to the Reward, are permitted to give Evidence merely upon this Foundation, that it would be absurd to put such a Construction upon Acts of Parliament made to prevent Felonies and Robberies, as would be a manifest Encouragement to such Practices, and would destroy the whole Intent of the Acts. For if those who could have been Evidence before, could not be so, because they were intituled to the Reward, many Criminals would escape unpunished. And therefore in some Measure, for Necessity's Sake, and in order to carry on the Design of these Acts, such Persons are still allowed to be Evidence.

It has been said likewise, in Favour of the present Bill, that Accomplices, tho' they have a Promise of Pardon, on Condition

D

of



of their giving Evidence, have frequently been allowed to be Witnesses; but whether they ought to be so or not, is very difficult to say; because (as I am informed) there has been a great Variety of Opinions in relation to this Matter. It has sometimes, I believe, been winked at, but never (as I am told) solemnly determined that such Persons may be Evidence: And Lord Chief Justice *Hale*, in his History of the Pleas of the Crown, Vol. II. p. 280, delivers his Opinion in this Manner: *For my own Part, I have always thought, that if a Person hath a Promise of Pardon, upon Condition of his giving Evidence against one of his Accomplices, he is thereby disabled from being a Witness;* and I had rather have the Opinion of my Lord Chief Justice *Hale* of my Side, than of a hundred such Judges as *Jefferys*. I own that Lord Chief Justice *Pratt*, and the other Judges of the King's Bench, in the Case of *Layser*, seemed to think otherwise, but they all went upon this Reason, that a Promise was no more than Hopes, and that if Hope was sufficient to exclude a Man from being a Witness, no Accomplice could ever be an Evidence, because they always give their Testimony in Hopes of obtaining a Pardon. It does not become me to give my Sentiments of the Strength or Weakness of this Argument. But thus much I will ven-

ture

ture to say, That no Judge has (as I believe) ever yet went so far as to say, that if a Man has an actual Pardon under the great Seal, only on Condition of his giving Evidence against another, such Person can be admitted to be an Evidence.

As to Proclamations, they are never issued, but when it is certain that a Murder or other Crime has been actually committed; and when the Persons, suspected to be guilty of the Fact, are fled from Justice; and the Reward is always for apprehending and discovering them, and not for giving Evidence.

The Acts which have been made to prevent Frauds in the Revenue, only relate to particular Facts, and the Indemnification is particular likewise; and there is a certain Benefit arising to the Publick from these Acts, for it has been found by Experience, that without those Methods, the Frauds in the Revenue could never be discovered: And to compare those Acts with the present Bill, which offers a general Indemnity to any Person that will discover any Thing relating to the Lord *Orford*, is, I think, a plain Demonstration, that those who are Advocates for the present Bill, are in great Want of Arguments to support it.

As to that wise Maxim, *that the Publick has a Right to every Man's Evidence,*

though it be laid down never so solemnly, it is no more than may be said of every private Person ; for every Man in the Kingdom has a Right to the Evidence of another, if he wants it, to defend his Person or his Estate, and has by Law a Method of compelling him to be so, if he has no legal Objection to the contrary ; but neither the Publick, nor any private Person can compel another, by illegal Methods, to become an Evidence for him, nor to be so, if he has a just and a legal Excuse. If therefore this Maxim had been cited, in Support of such a Bill as this, in any of the Courts of *Westminster-hall*, it would have been called mere *quibbling* and *Chicane* ; and I can look upon it as no better, let it be advanced by whom it will.

As to what has been said, that there is *Corpus Suspicionis*, which is tantamount to *Corpus delicti*, this Notion has been excellently well ridiculed, by turning the Words into *English*, and then, as *Suspicion* is nothing but a *Shadow*, *Corpus Suspicionis* is nothing but the *Body of a Shadow*. But-least it should be said that this is too ludicrous, I will consider the Argument, (if it may be so called) a little more seriously, and putting it in the best Light that I can, it will stand thus. A violent Suspicion, as well as a violent Presumption, is equal to full Proof, and therefore Persons are frequently com-

mitted

mitted  
such Co  
to be le  
can be  
this Li  
no on  
picion,  
Fact ha  
mitmen  
there  
hath b  
is a  
ty of  
fore on  
lieve f  
to be  
ever a  
not c  
Facts  
prove  
I h  
a Ma  
Body  
Exp  
mur  
it ap  
whi  
a R  
her  
for  
is l



mitted only for Suspicion of Felony, and such Commitments have been always held to be legal. This, I think, is the most that can be made of the Argument, and even in this Light it is still but a Shadow; for no one was ever committed upon Suspicion, unless it was certain that some Fact had been done. Suppose a Commitment should be drawn thus: *Whereas there is a Suspicion that such a Fact hath been committed; and whereas there is a Suspicion that A. B. hath been guilty of this suspected Fact, we do therefore order him to be committed, &c.* I believe such a Commitment would be thought to be very absurd and illegal; besides, whenever a Person is committed on Suspicion, not only the Fact itself, but likewise the Facts inducing the Suspicion, must be first proved upon Oath.

I have heard indeed, that some Years ago a Man was tryed for Murther before the Body was found, and when, to invert the Expression, there was only *suspicio Corporis murtherati*; and about two Years afterwards it appeared that the Man was living: Upon which all the Judges of *England* came to a Resolution, which I believe has been adhered to ever since, never to hang a Man for Murder, till it is certain that a Person is killed.

As

As to the Arguments drawn from the Sense of the People, and the Voice of the Nation in general; they scarcely deserve an Answer; for I can say of any one whom I do not like, that he is universally hated and detested, and therefore ought to be hanged; and the only proper Answer that can be given to it is, to affirm directly the contrary, and then, when the Issue is join'd, as the Matter is not capable of Proof, I know no Way of trying it, but the old Method of Tryal by Battle. However, that my Assertion of the Negative may not be entirely without Proof, I appeal, *Sir*, to you in the first Place, who live in the Country, whether *Lord Orford*, notwithstanding all the scandalous Lies which have been of late dispersed against him, be not even still a much more popular Man, than many of those who call themselves *Patriots*. I appeal likewise to both Houses of Parliament, in which he hath still so many faithful Friends; and I defy any of those who rail so loudly against him, to shew an Instance of a Person in Disgrace, in any Age or Country, so much beloved and esteemed by all honest and impartial Men.

And now having stated the Arguments on both Sides with the utmost Candour and Impartiality, I leave you to judge for yourself; only as I know you to be a very honest Man, it is not I think very difficult to

guess

guess  
the Sen  
lebit :  
nay eve  
founded  
stronger  
prevail

guess on which Side you will pronounce the Sentence, *Veritas magna est & prevalebit* : Ambition, Malice, and Ingratitude, nay even Popularity itself, will all fail, if founded in Falshood ; for Truth is the strongest, and will always most certainly prevail at last.



**F I N I S.**



ends on which side you will pronounce  
the Sentence, Veritas magis est & preva-  
let: Ambition, Malice, and Ingratitude,  
may even Popularity itself, will all fail, if  
founded in Falshood: for Truth is the  
strongest, and will always most certainly  
prevail at last.



THE END

